

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

LEONIE WILSON

Appellant,

v.

FRANCISCAN CARE CENTER and
the UNEMPLOYMENT INSURANCE
APPEAL BOARD,

Appellees.

C.A. No. 05A-09-012 RRC

Submitted: February 15, 2006

Decided: April 18, 2006

On Appeal from the Unemployment Insurance Appeal Board.

AFFIRMED.

ORDER

Leonie Wilson, Wilmington, Delaware, *pro se*.

Jeffrey K. Martin, Esquire, Margolis Edelstein, Wilmington, Delaware, Attorney
for Appellee Franciscan Care Center.

Mary Page Bailey, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for Appellee Unemployment Insurance Appeal
Board.

COOCH, J.

This 18th day of April, 2006, upon consideration of the appeal of Leonie Wilson (“Employee” or “Appellant”) from the Unemployment Insurance Appeal Board’s decision of October 2, 2005, it appears to the Court that:

1. Employee was employed by Franciscan Care Center as a Certified Nurse Assistant. On November 25, 2004, Employee was asked to get a resident out of bed, but instead “got argumentative” with her supervisor; Employee also refused to assist a resident who had requested help.¹ That same day Employee was sent home and was later terminated from her employment for a violation of a resident’s rights, engaging in a confrontation with a resident, and for insubordination and unprofessional behavior.²

2. Employee originally filed a claim for unemployment benefits on December 5, 2004, and was subsequently deemed by a Claims Deputy to be disqualified from such benefits.³ A Notice of Determination was mailed to Employee’s address of record on December 27, 2004, stating that the last day to appeal disqualification was January 6, 2005.⁴ Employee, however, filed an appeal to that decision on January 13, 2005. On March 9, 2005, Chief Appeals Referee Rudolph J. Antonini, Jr. denied Employee’s appeal and affirmed the December 27,

¹ Record at 6.

² Record at 10.

³ *Id.*

⁴ Record at 15.

2004, decision of the Claims Deputy on the basis that Employee's appeal was untimely.⁵ After a timely appeal of the Chief Appeals Referee's decision to the Unemployment Insurance Appeal Board ("UIAB"), the UIAB affirmed and the decision became final on October 2, 2005.⁶ Employee appeals from that decision.

3. Employee claims that although she received the Claims Deputy's December 27, 2004, determination in the mail, she did not realize that she had a right to appeal because she did not read the entire decision.⁷ Although Appellant did not set forth any argument in her opening brief as to her failure to file a timely appeal, Appellant alleges in her reply brief that her "case manager" "lead [sic] [Appellant] to believe that [the Claims Deputy's] decision was the final one."⁸ Appellant also contends that when she went to the Department of Labor on January 13, 2005, "[a]nother worker (one of the receptionist[s]) explained to me that I could file a late appeal."⁹

4. Both Appellees argue that the UIAB's affirmance of the Chief Appeals Referee's decision was correct on the basis that Appellant's late appeal from the Claims Deputy's determination was barred because the appeal was filed after the

⁵ Record at 16.

⁶ Record at 34-35.

⁷ Tr. Wilson, Unemployment Insurance Appeal No. 157359, at 8-9.

⁸ Appellant's Reply 1.

⁹ *Id.*

determination became final on January 6, 2005.¹⁰ For the reasons below, the Court agrees and affirms the UIAB's October 2, 2005, decision.

5. When this Court reviews a procedural decision of the UIAB, which in this case is a discretionary matter (as opposed to a factual decision of the UIAB that would require a substantial evidence review), the Court must consider whether the UIAB abused its discretion in rendering its decision.¹¹ A procedural decision by an administrative agency is not an abuse of discretion "unless it is based on clearly unreasonable or capricious grounds" or "the Board exceeds the bounds of reason in view of the circumstances and had ignored recognized rules of law or practice so as to produce injustice."¹² Absent an abuse of discretion, the Court must affirm the judgment of the UIAB if it did not otherwise commit an error of law.¹³

6. This Court affirms the UIAB's decision to affirm the Chief Appeals Referee's dismissal, pursuant to 19 *Del. C.* § 3318(b), of Appellant's untimely appeal of the Claim Deputy's determination. Section 3318(b) provides:

¹⁰ Appellee Franciscan Care Center's Ans. Br. 2-3; Appellee UIAB's Ans. Br. 4-5.

¹¹ *Funk v. UIAB*, 591 A.2d 222, 225 (Del. 1991) (finding no abuse of discretion where Board refused to hear appeal on its own motion after Board found that claimant's appeal was untimely because it was not filed within the ten-day limit set by statute for such appeals).

¹² *K-Mart, Inc. v. Bowles*, 1995 WL 269872, * 2 (Del. Super.).

¹³ *Funk*, 591 A.2d at 225.

Unless a claimant or last employer who has submitted a timely and completed separation notice in accordance with § 3317 of this title files an appeal within 10 calendar days after such Claims Deputy's determination was mailed to the last known addresses of the claimant and the last employer, the Claims Deputy's determination shall be final and benefits shall be paid or denied in accordance therewith.

“The time for filing an appeal is an express statutory condition of jurisdiction that is both mandatory and dispositive.”¹⁴ Appellate jurisdiction cannot be invoked unless that express jurisdictional condition is met. However, the UIAB may accept appeals in certain situations where “the interest of justice would not be served by inaction.”¹⁵

7. Here, Appellant did not file an appeal within the ten day period provided for in § 3318(b). Thus, the Chief Appeals Referee could not exercise jurisdiction because he found Appellant's appeal to be untimely and therefore jurisdictionally barred. Moreover, the mere fact that Appellant did not understand that she did not have the right to appeal because she failed to read the entire determination is not enough for the UIAB to exercise jurisdiction to serve the interests of justice. The

¹⁴ *Hartson v. Unemployment Ins. Appeal Bd.*, 2004 WL 772067 (Del. Super.) (finding no abuse of discretion where the UIAB refused to hear an appeal because employee's appeal from determination by claims deputy was untimely) (citing *Lively v. Dover Wipes Co. & UIAB*, 2003 WL 21213415, *1 (affirming UIAB's dismissal based on ten day jurisdictional bar)).

¹⁵ *Lively*, at *1 (also affirming UIAB's refusal to assert jurisdiction *sua sponte* solely based on “the mere assertion” that the appellant did not receive the decision) (citing *Funk v. UIAB*, 591 A.2d at 225). 19 *Del. C.* § 3320(a) states, in pertinent part: “The Unemployment Insurance Appeal Board may on its own motion, affirm, modify, or reverse any decision of an appeal tribunal on the basis of the evidence previously submitted to the appeal tribunal or it may permit any of the parties to such decision to initiate further appeal before it.”

uncorroborated and conclusory allegation that a receptionist told Appellant that she could “file a late appeal” is also insufficient, especially when coupled with Appellant’s failure to read the initial disqualification determination. Finally, there was no administrative error by the Department of Labor that Appellant could point to that would allow the UIAB or this Court to reverse the Chief Appeals Referee’s decision.

8. The Court finds that the UIAB did not abuse its discretion when it affirmed the Chief Appeals Referee’s dismissal pursuant to § 3318(b) of Appellant’s untimely appeal from the Claim Deputy’s disqualification determination. The decision of the UIAB is **AFFIRMED**.

IT IS SO ORDERED.

Richard R. Cooch

oc: Prothonotary
cc: Unemployment Insurance Appeals Board